

2005 DRAFTING REQUEST

Assembly Amendment (AA-SB530)

Received: **05/03/2006**

Received By: **phurley**

Wanted: **As time permits**

Identical to LRB:

For: **Dean Kaufert (608) 266-5719**

By/Representing:

This file may be shown to any legislator: **NO**

Drafter: **phurley**

May Contact:

Addl. Drafters:

Subject: **Drunk Driving - penalties**
Drunk Driving - procedures

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Kaufert@legis.state.wi.us**

Carbon copy (CC:) to: **mike.wagner@legis.state.wi.us**

Pre Topic:

No specific pre topic given

Topic:

Winnebago pilot program

Instructions:

6 year sunset

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	phurley	kfollett					
	05/03/2006	05/03/2006					
	phurley	csicilia					
	05/03/2006	05/03/2006					
/1			rschluet		sbasford	sbasford	
			05/04/2006		05/04/2006	05/04/2006	

FE Sent For:

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/?	phurley	kfollett					
	05/03/2006	05/03/2006					
	phurley	lr_editor					
	05/03/2006						

FE Sent For:

1 45 5/3 06
446 JK
<END>

2005 SENATE BILL 530

January 27, 2006 - Introduced by Senator ROESSLER, cosponsored by Representatives KAUFERT, OWENS, ALBERS, BERCEAU, GUNDERSON, JESKEWITZ, KREIBICH and OTT. Referred to Committee on Judiciary, Corrections and Privacy.

1 **AN ACT** *to amend* 346.65 (2) (b), 346.65 (2) (c), 346.65 (2j) (b), 346.65 (2j) (c),
2 346.65 (3m) and 973.09 (1) (d) 1.; and *to create* 346.65 (2) (bm), 346.65 (2) (cm),
3 346.65 (2j) (bm), 346.65 (2j) (cm) and 346.65 (3r) of the statutes; **relating to:**
4 drunken driving and creating a penalty.

Analysis by the Legislative Reference Bureau

This bill creates a pilot program for sentencing persons in Winnebago county who are convicted of certain second or third offenses involving operating a motor vehicle with a prohibited alcohol concentration, or under the influence of an intoxicant, a controlled substance or its analog, or any combination thereof (OWI).

Under the bill, the minimum period of imprisonment for an OWI offense in Winnebago county is reduced if the violator successfully completes a period of probation that includes alcohol and other drug treatment. A person may opt to complete a treatment program and receive a reduced period of imprisonment only once.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

SENATE BILL 530

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 346.65 (2) (b) of the statutes is amended to read:

2 346.65 (2) (b) Except as provided in ~~par.~~ pars. (bm) and (f), shall be fined not
3 less than \$350 nor more than \$1,100 and imprisoned for not less than 5 days nor more
4 than 6 months if the number of convictions under ss. 940.09 (1) and 940.25 in the
5 person's lifetime, plus the total number of suspensions, revocations, and other
6 convictions counted under s. 343.307 (1) within a 10-year period, equals 2, except
7 that suspensions, revocations, or convictions arising out of the same incident or
8 occurrence shall be counted as one.

9 **SECTION 2.** 346.65 (2) (bm) of the statutes is created to read:

10 346.65 (2) (bm) In Winnebago County, if the number of convictions under ss.
11 940.09 (1) and 940.25 in the person's lifetime, plus the total number of suspensions,
12 revocations, and other convictions counted under s. 343.307 (1) within a 10-year
13 period, equals 2, except that suspensions, revocations, or convictions arising out of
14 the same incident or occurrence shall be counted as one, the fine shall be the same
15 as under par. (b), but the period of imprisonment shall be not less than 5 days, except
16 that if the person successfully completes a period of probation that includes alcohol
17 and other drug treatment, the period of imprisonment shall be not less than 2 days.
18 A person may be sentenced under this paragraph or under par. (cm) or sub. (2j) (bm)
19 or (cm) or (3r) once in his or her lifetime.

20 **SECTION 3.** 346.65 (2) (c) of the statutes is amended to read:

SENATE BILL 530

1 346.65 (2) (c) Except as provided in pars. (cm), (f), and (g), shall be fined not
2 less than \$600 nor more than \$2,000 and imprisoned for not less than 30 days nor
3 more than one year in the county jail if the number of convictions under ss. 940.09
4 (1) and 940.25 in the person's lifetime, plus the total number of suspensions,
5 revocations, and other convictions counted under s. 343.307 (1), equals 3, except that
6 suspensions, revocations, or convictions arising out of the same incident or
7 occurrence shall be counted as one.

8 **SECTION 4.** 346.65 (2) (cm) of the statutes is created to read:

9 346.65 (2) (cm) In Winnebago County, if the number of convictions under ss.
10 940.09 (1) and 940.25 in the person's lifetime, plus the total number of suspensions,
11 revocations, and other convictions counted under s. 343.307 (1) within a 10-year
12 period, equals 3, except that suspensions, revocations, or convictions arising out of
13 the same incident or occurrence shall be counted as one, the fine shall be the same
14 as under par. (c), but the period of imprisonment shall be not less than 30 days, except
15 that if the person successfully completes a period of probation that includes alcohol
16 and other drug treatment, the period of imprisonment shall be not less than 7 days.
17 A person may be sentenced under this paragraph or under par. (bm) or sub. (2j) (bm)
18 or (cm) or (3r) once in his or her lifetime.

19 **SECTION 5.** 346.65 (2j) (b) of the statutes is amended to read:

20 346.65 (2j) (b) Except as provided in ~~par.~~ pars. (bm) and (d), shall be fined not
21 less than \$300 nor more than \$1,000 and imprisoned for not less than 5 days nor more
22 than 6 months if the number of prior convictions under ss. 940.09 (1) and 940.25 in
23 the person's lifetime, plus the total number of other convictions, suspension, and
24 revocations counted under s. 343.307 (2) within a 10-year period, equals 2.

25 **SECTION 6.** 346.65 (2j) (bm) of the statutes is created to read:

SENATE BILL 530**SECTION 6**

1 346.65 (2j) (bm) In Winnebago County, if the number of convictions under ss.
2 940.09 (1) and 940.25 in the person's lifetime, plus the total number of suspensions,
3 revocations, and other convictions counted under s. 343.307 (1) within a 10-year
4 period, equals 2, except that suspensions, revocations, or convictions arising out of
5 the same incident or occurrence shall be counted as one, the fine shall be the same
6 as under par. (b), but the period of imprisonment shall be not less than 5 days, except
7 that if the person successfully completes a period of probation that includes alcohol
8 and other drug treatment, the period of imprisonment shall be not less than 2 days.
9 A person may be sentenced under this paragraph or under par. (cm) or sub. (2) (bm)
10 or (cm) or (3r) once in his or her lifetime.

11 **SECTION 7.** 346.65 (2j) (c) of the statutes is amended to read:

12 346.65 (2j) (c) Except as provided in ~~par.~~ pars. (cm) and (d), shall be fined not
13 less than \$600 nor more than \$2,000 and imprisoned for not less than 30 days nor
14 more than one year in the county jail if the number of convictions under ss. 940.09
15 (1) and 940.25 in the person's lifetime, plus the total number of other convictions,
16 suspensions, and revocations, counted under s. 343.307 (2), equals 3 or more.

17 **SECTION 8.** 346.65 (2j) (cm) of the statutes is created to read:

18 346.65 (2j) (cm) In Winnebago County, if the number of convictions under ss.
19 940.09 (1) and 940.25 in the person's lifetime, plus the total number of suspensions,
20 revocations, and other convictions counted under s. 343.307 (1) within a 10-year
21 period, equals 3 or more, except that suspensions, revocations, or convictions arising
22 out of the same incident or occurrence shall be counted as one, the fine shall be the
23 same as under par. (c), but the period of imprisonment shall be not less than 30 days,
24 except that if the person successfully completes a period of probation that includes
25 alcohol and other drug treatment, the period of imprisonment shall be not less than

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1 7 days. A person may be sentenced under this paragraph or under par. (bm) or sub.
2 (2) (bm) or (cm) or (3r) once in his or her lifetime.

3 **SECTION 9.** 346.65 (3m) of the statutes is amended to read:

4 346.65 (3m) ~~Any~~ Except as provided in sub. (3r), any person violating s. 346.63
5 (2) or (6) shall be fined not less than \$300 nor more than \$2,000 and may be
6 imprisoned for not less than 30 days nor more than one year in the county jail. If
7 there was a minor passenger under 16 years of age in the motor vehicle at the time
8 of the violation that gave rise to the conviction under s. 346.63 (2) or (6), the offense
9 is a felony, the applicable minimum and maximum fines or periods of imprisonment
10 for the conviction are doubled and the place of imprisonment shall be determined
11 under s. 973.02.

12 **SECTION 10.** 346.65 (3r) of the statutes is created to read:

13 346.65 (3r) In Winnebago County, any person violating s. 346.63 (2) or (6) shall
14 be fined the same as under sub. (3m), but the period of imprisonment shall be not
15 less than 60 days, except that if the person successfully completes a period of
16 probation that includes alcohol and other drug treatment, the period of
17 imprisonment shall be not less than 15 days. If there was a minor passenger under
18 16 years of age in the motor vehicle at the time of the violation that gave rise to the
19 conviction under s. 346.63 (2) or (6), the offense is a felony, the applicable minimum
20 and maximum fines or periods of imprisonment for the conviction are doubled and
21 the place of imprisonment shall be determined under s. 973.02. A person may be
22 sentenced under this subsection or under sub. (2) (bm) or (cm) or (2j) (bm) or (cm) once
23 in his or her lifetime.

24 **SECTION 11.** 973.09 (1) (d) 1. of the statutes is amended to read:

SENATE BILL 530

973.09 (1) (d) 1. A violation under s. 346.63 (1) that subjects the person to a mandatory minimum period of imprisonment under s. 346.65 (2) (b) or (c). This subdivision does not apply to a person sentenced in Winnebago County if the court orders the person to complete a period of probation that includes alcohol and other drug treatment.

SECTION 12. Initial applicability.

(1) This act first applies to violations that are committed on the effective date of this subsection.

(END)

a3146/1
PJM
PJM
cjs

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

**ASSEMBLY AMENDMENT ,
TO 2005 ASSEMBLY BILL 530**

by
5-1-05
830 AM
firm

1 At the locations indicated, amend the bill as follows:

2 1. Page 2, line 8: after that line insert:

3 "SECTION 1m. 346.65 (2) (b) of the statutes, as affected by 2005 Wisconsin Act

4 (this act), is amended to read:

5 346.65 (2) (b) Except as provided in ~~pars. (bm) and par.~~ (f), shall be fined not

6 less than \$350 nor more than \$1,100 and imprisoned for not less than 5 days nor more

7 than 6 months if the number of convictions under ss. 940.09 (1) and 940.25 in the

8 person's lifetime, plus the total number of suspensions, revocations and other

9 convictions counted under s. 343.307 (1) within a 10-year period, equals 2, except

10 that suspensions, revocations or convictions arising out of the same incident or

11 occurrence shall be counted as one."

Insert A x

1 **2.** Page 2, line 19: after that line insert:

2 “**SECTION 2m.** 346.65 (2) (bm) of the statutes, as created by 2005 Wisconsin Act

3 *iii* (this act), is repealed.”

4 **3.** Page 3, line 7: after that line insert:

5 “**SECTION 3m.** 346.65 (2) (c) of the statutes, as affected by 2005 Wisconsin Act

6 *iii* (this act), is amended to read:

7 346.65 (2) (c) Except as provided in pars. ~~(em)~~, (f), and (g), shall be fined not
8 less than \$600 nor more than \$2,000 and imprisoned for not less than 30 days nor
9 more than one year in the county jail if the number of convictions under ss. 940.09
10 (1) and 940.25 in the person's lifetime, plus the total number of suspensions,
11 revocations and other convictions counted under s. 343.307 (1), equals 3, except that
12 suspensions, revocations or convictions arising out of the same incident or
13 occurrence shall be counted as one.”

Insert B x
History: 1971 c. 278; 1973 c. 218; 1977 c. 193; 1979 c. 221; 1981 c. 20; 1985 a. 80, 337; 1987 a. 3, 27, 398, 399; 1989 a. 105, 176, 271; 1991 a. 39, 251, 277, 315; 1993 a. 198, 317, 475; 1995 a. 44, 338, 359, 425; 1997 a. 27, 135, 199, 237, 277, 283, 295; 1999 a. 32, 109; 2001 a. 16 ss. 3443k, 4060gm, 4060hw, 4060hy; 2001 a. 109; 2003 a. 33, 97, 139, 326.

14 **4.** Page 3, line 18: after that line insert:

15 “**SECTION 4m.** 346.65 (2) (cm) of the statutes, as created by 2005 Wisconsin Act

16 *iii* (this act), is repealed.”

17 **5.** Page 3, line 24: after that line insert:

18 “**SECTION 5m.** 346.65 (2j) (b) of the statutes, as affected by 2005 Wisconsin Act

19 *iii* (this act), is amended to read:

20 346.65 (2j) (b) Except as provided in pars. ~~(bm)~~ and par. (d), shall be fined not
21 less than \$300 nor more than \$1,000 and imprisoned for not less than 5 days nor more
22 than 6 months if the number of prior convictions under ss. 940.09 (1) and 940.25 in

① the person's lifetime, plus the total number of other convictions, suspension and
2 revocations counted under s. 343.307 (2) within a 10-year period, equals 2.”

Insert
History: 1971 c. 278; 1973 c. 218; 1977 c. 193; 1979 c. 221; 1981 c. 20; 1985 a. 80, 337; 1987 a. 3, 27, 398, 399; 1989 a. 105, 176, 271; 1991 a. 39, 251, 277, 315; 1993 a. 198, 317, 475; 1995 a. 44, 338, 359, 425; 1997 a. 27, 135, 199, 237, 277, 283, 295; 1999 a. 32, 109; 2001 a. 16 ss. 3443k, 4060gm, 4060hw, 4060hy; 2001 a. 109; 2003 a. 33, 97, 139, 326.

3 **6.** Page 4, line 10: after that line insert:

4 “SECTION 6m. 346.65 (2j) (bm) of the statutes, as created by 2005 Wisconsin Act

⑤ *inn* (this act), is repealed.”

6 **7.** Page 4, line 16: after that line insert:

7 “SECTION 7m. 346.65 (2j) (c) of the statutes, as affected by 2005 Wisconsin Act

8 *inn* (this act), is amended to read:

9 346.65 (2j) (c) Except as provided in ~~pars. (cm) and par.~~ (d), shall be fined not
10 less than \$600 nor more than \$2,000 and imprisoned for not less than 30 days nor
11 more than one year in the county jail if the number of convictions under ss. 940.09
12 (1) and 940.25 in the person's lifetime, plus the total number of other convictions,
⑬ *Insert* suspensions and revocations counted under s. 343.307 (2), equals 3 or more.”

History: 1971 c. 278; 1973 c. 218; 1977 c. 193; 1979 c. 221; 1981 c. 20; 1985 a. 80, 337; 1987 a. 3, 27, 398, 399; 1989 a. 105, 176, 271; 1991 a. 39, 251, 277, 315; 1993 a. 198, 317, 475; 1995 a. 44, 338, 359, 425; 1997 a. 27, 135, 199, 237, 277, 283, 295; 1999 a. 32, 109; 2001 a. 16 ss. 3443k, 4060gm, 4060hw, 4060hy; 2001 a. 109; 2003 a. 33, 97, 139, 326.

14 **8.** Page 5, line 2: after that line insert:

15 “SECTION 8m. 346.65 (2j) (cm) of the statutes, as created by 2005 Wisconsin Act

16 *inn* (this act), is repealed.”

17 **9.** Page 5, line 11: after that line insert:

18 “SECTION 9m. 346.65 (3m) of the statutes, as affected by 2005 Wisconsin Act

19 *....* (this act), is amended to read:

20 346.65 (3m) ~~Except as provided in sub. (3r), any~~ Any person violating s. 346.63
21 (2) or (6) shall be fined not less than \$300 nor more than \$2,000 and may be
22 imprisoned for not less than 30 days nor more than one year in the county jail. If

1 there was a minor passenger under 16 years of age in the motor vehicle at the time
 2 of the violation that gave rise to the conviction under s. 346.63 (2) or (6), the offense
 3 is a felony, the applicable minimum and maximum fines or periods of imprisonment
 4 for the conviction are doubled and the place of imprisonment shall be determined
 5 under s. 973.02.”.

Insert Ex
 History: 1971 c. 278; 1973 c. 218; 1977 c. 193; 1979 c. 221; 1981 c. 20; 1985 a. 80, 337; 1987 a. 3, 27, 398, 399; 1989 a. 105, 176, 271; 1991 a. 39, 251, 277, 315; 1993 a. 198, 317, 475; 1995 a. 44, 338, 359, 425; 1997 a. 27, 135, 199, 237, 277, 283, 295; 1999 a. 32, 109; 2001 a. 16 ss. 3443k, 4060gm, 4060hw, 4060hy; 2001 a. 109; 2003 a. 33, 97, 139, 326.

6 **10.** Page 5, line 23: after that line insert:

7 “SECTION 10m. 346.65 (3r) of the statutes, as created by 2005 Wisconsin Act

8 (iii) (this act), is repealed.”

9 **11.** Page 6, line 5: after that line insert:

10 “SECTION 11m. 973.09 (1) (d) 1. of the statutes, as affected by 2005 Wisconsin

11 Act . . . (this act), is amended to read:

12 973.09 (1) (d) 1. A violation under s. 346.63 (1) that subjects the person to a
 13 mandatory minimum period of imprisonment under s. 346.65 (2) (b) or (c). This
 14 subdivision does not apply to a person sentenced in Winnebago County if the court
 15 orders the person to complete a period of probation that includes alcohol and other
 16 drug treatment.”

History: 1971 c. 298; 1979 c. 119, 189, 238, 355, 356; 1981 c. 50, 88, 326, 352, 391; 1983 a. 27, 104, 254, 346, 519, 538; 1985 a. 150; 1987 a. 347, 398, 403, 412; 1989 a. 31, 121, 188; 1991 a. 39; 1993 a. 48, 486; 1995 a. 24, 224, 281; 1997 a. 27, 41, 289; 1999 a. 9, 58, 69, 186; 2001 a. 16, 104, 109; 2003 a. 33, 121, 139, 141; 2005 a. 25.

17 **12.** Page 6, line 8: after that line insert:

18 “SECTION 12m. Effective ~~date~~

19 (1) This act takes effect on the day after publication except that the treatment

20 of sections 1m, 2m, 3m, 4m, 5m, 6m, 7m, 8m, 9m, 10m, and 11m of this act takes effect

21 on the first day of the 60th month beginning after publication.”

22 (END)

72d

INS X

**ASSEMBLY AMENDMENT ,
TO 2005 SENATE BILL 530**

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 2, line 17: delete “and other drug”.

3 ~~2.~~ Page 2, line 19: after “lifetime” insert “, and only if the underlying offense
4 is related to the person’s use of alcohol”.

5 **3.** Page 3, line 16: delete “and other drug”.

6 ~~4.~~ Page 3, line 18: after “lifetime” insert “, and only if the underlying offense
7 is related to the person’s use of alcohol”.

8 **5.** Page 4, line 8: delete “and other drug”.

9 ~~6.~~ Page 4, line 10: after “lifetime” insert “, and only if the underlying offense
10 is related to the person’s use of alcohol”.

11 **7.** Page 4, line 25: delete “and other drug”.

INS Bx
INS Ax
INS Cx

(INDEX)

1 ~~8.~~ Page 5, line 2: after “lifetime” insert “, and only if the underlying offense is
2 related to the person’s use of alcohol”.

3 **9.** Page 5, line 16: delete “and other drug”.

4 ~~10.~~ Page 5, line 23: after “lifetime” insert “, and only if the underlying offense
5 is related to the person’s use of alcohol”.

6 **11.** Page 6, line 4: delete “and other”.

7 **12.** Page 6, line 5: delete “drug”.

8 (END)

INDEX

2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBa3144/?ins
PJH:.....

NS
Ay

⑨ #. Page 5, line 23: after that line, after the material inserted by Senate amendments 1 and 2, insert:

⑩n

"SECTION ?? 346.65 (8) of the statutes, as created by 2005 Wisconsin Act

(this act), is repealed."

INS
By

"SECTION ?? 973.11 (1) (intro.) of the statutes, as affected by 2005 Wisconsin

Act 2003 Wisconsin Act 33 and by 2005 Wisconsin Act ... (this act), is amended to

read:

11n

973.11 (1) PLACEMENTS. (intro.) If a person is convicted of or pleads guilty or no contest to one or more misdemeanors for which either mandatory periods of imprisonment are not required or the person is sentenced under s. 346.65 (2) (bm) or (cm), (2j) (bm) or (cm), or (3r), if the chief judge of the judicial administrative district has approved a volunteers in probation program established in the applicable county, and if the court decides that volunteer supervision under the program will likely benefit the person and the community and subject to the limitations under sub. (3), the court may withhold sentence or judgment of conviction and order that the person be placed with that volunteers in probation program. A person's participation in the program may not be used to conceal, withhold, or mask information regarding the judgment of conviction if the conviction is required to be included in a record kept under s. 343.23 (2) (a). Except as provided in sub. (3), the order shall provide any conditions that the court determines are reasonable and appropriate and may include, but need not be limited to, one or more of the following:".

History: 1991 a. 253; 1993 a. 213; 2003 a. 33.

⑨ after that line,
Page 6, line 5: delete the material inserted by senate amendment 1.

⑨ Page 6, line 5: after that line, after the
material inserted by senate amendment ~~1~~ 2,
insert:

INS X

The treatment of sections 346.65(2)(b) (by SECTION 1m) and (c) (by SECTION 3m), (2j) (b) (by SECTION 5m) and (c) (by SECTION 7m), and (3m) (by SECTION 9m), 973.09(1)(d)1. (by SECTION 11b), and 973.11(1)(intro.) (by SECTION 11n) of the statutes and the repeal of sections 346.65(2)(bm) and (cm), (2j)(bm) and (cm), (3r), and (8) of the statutes take effect